

HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES

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HOUSE RESEARCH ORGANIZATION

daily floor report

Thursday, April 25, 2019
86th Legislature, Number 52
The House convenes at 10 a.m.
Part One

Nine bills are on the Major State Calendar and 32 bills are on the General State Calendar for second reading consideration today. The bills analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.



Dwayne Bohac
Chairman
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HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Thursday, April 25, 2019

86th Legislature, Number 52

Part 1

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SUBJECT: Adopting certain Sunset recommendations for the LCRA

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 11 ayes — Larson, Metcalf, Dominguez, Farrar, Harris, T. King, Lang, Nevárez, Oliverson, Price, Ramos

0 nays

SENATE VOTE: On final passage, April 15 — 31–0

WITNESSES: *On House companion bill, HB 1502:*

For — Phil Wilson, Lower Colorado River Authority; (*Registered, but did not testify:* Matthew Geske, Austin Chamber of Commerce; Cyrus Reed, Lone Star Chapter Sierra Club; Tom Oney, Lower Colorado River Authority; Kirby Brown, Lower Colorado River Basin Coalition; Donnis Baggett and Mike Hodges, Texas Press Association)

Against — James Lee Murphy, League of Independent Voters; Michele Gangnes, Simsboro Aquifer Water Defense Fund and Neighbors for Neighbors; Andrew Wier; (*Registered, but did not testify:* Linda Curtis, League of Independent Voters of Texas)

On — (*Registered, but did not testify:* Erick Fajardo, Sunset Advisory Commission)

BACKGROUND: The Legislature created the Lower Colorado River Authority (LCRA) in 1934 to develop, conserve, and protect the water of the lower Colorado River basin and to provide electricity to Central Texas. Today LCRA is authorized for a range of activities, including certain aspects of flood control, selling raw and treated water, and building and operating reservoirs.

Functions. LCRA engages in a number of key activities, including:

- operating the six dams of the Highland Lakes and 279 automated gauges of the Hydromet system;

- developing and conserving water supply resources for more than 1 million people;
- providing raw water to municipalities, utilities, agriculture, and industry in the lower Colorado River basin;
- maintaining parks and recreational facilities; and
- monitoring the water quality in the basin through the Texas Clean Rivers Program and the authority's environmental sciences laboratory.

The authority has jurisdiction over 10 counties in the lower Colorado River basin and provides raw water to a service area that covers 35 counties. LCRA also serves as a voting member and administrator of the Region K Regional Water Planning Group.

Governing structure. LCRA is governed by a 15-member board of directors appointed by the governor. Twelve directors represent the 10 counties within the authority's jurisdiction, of whom two represent Travis County, nine represent each of the other nine counties, and one director serves in an at-large position and may be appointed from any county other than Travis County. The final three directors are appointed from counties inside the LCRA electric service area but outside of its jurisdiction. Members serve staggered six-year terms, and the governor appoints the presiding officer.

Funding. LCRA receives no state appropriations and is not authorized to assess taxes. The authority's revenues are generated from the sale of electricity, electric transmission, and water services.

In fiscal 2017, the authority collected about \$1 billion in revenues and spent about \$928 million. About 93 percent of LCRA's funding comes from its electric operations, which are excluded from Sunset review. Other revenue sources include water and wastewater services, laboratory fees, and recreational fees.

Staffing. In fiscal 2018, LCRA employed 1,856 staff and spent about \$234 million in salaries and benefits. Of these, 181 staff directly support water-related functions, 644 serve authority-wide functions, and 17 are commissioned peace officers. About 29 percent of LCRA staff are located

at the authority's Austin headquarters, while the rest work in regional offices, dams, power plants, and other facilities.

SB 523 by Birdwell, enacted by the 84th Legislature in 2015, subjected the Lower Colorado River Authority to limited Sunset review every 12 years as if it were a state agency, except that the authority may not be abolished.

DIGEST: SB 606 would adopt certain Sunset Advisory Commission recommendations for the Lower Colorado River Authority (LCRA). The bill also would require the authority to undergo Sunset review again as if it were a state agency scheduled to be abolished September 1, 2031.

The bill would require the authority to develop and implement a public engagement policy for its water supply projects. This policy would have to describe how the authority would seek to actively engage stakeholders, including the possible use of advisory committees, community panels, town hall meetings, and other strategies.

SB 606 also would apply standard Sunset provisions to LCRA. These provisions would require that:

- board members receive appropriate training on the laws and policies relating to the authority, and complete this training by December 1, 2019;
- the board develop alternative dispute resolution procedures to resolve disputes within the authority's jurisdiction;
- the board develop and implement policies for public testimony at board meetings, including for committee-of-the-whole meetings where every director is a member; and
- the board develop a system to track and act on complaints.

The bill would take effect September 1, 2019.

SUPPORTERS SAY: SB 606 would improve the Lower Colorado River Authority's engagement with public stakeholders, which would create clear standards for the transparency of future water projects and improve the authority's customers' trust.

Developing groundwater resources is a natural extension and fulfillment of the authority's role as a water utility providing raw and treated water to stakeholders throughout the river basin. The recent agreement LCRA reached with concerned stakeholders over the development of groundwater in the Lost Pines Groundwater Conservation District is an example of how these interests can be successfully balanced to the benefit of the greater river basin.

**OPPONENTS
SAY:**

SB 606 would not go far enough in clarifying the competing interests of LCRA between developing groundwater resources, conserving the environment, and respecting the rights of local stakeholders. The clearest way to avoid these conflicts would be for the authority to get out of the groundwater development business.

SUBJECT: Expanding eligibility for the Veterans' Land Board land loan program

COMMITTEE: Defense and Veterans' Affairs — committee substitute recommended

VOTE: 9 ayes — Flynn, Tinderholt, Ashby, Hinojosa, Lopez, Lozano, Ramos, Reynolds, Romero

SENATE VOTE: On final passage, March 20 — 31-0

WITNESSES: None

BACKGROUND: The Veterans' Land Board (VLB) was created by Texas voters through a constitutional amendment in 1946. It is housed within the Texas General Land Office (GLO) and provides benefits and services for qualified Texas veterans, military members, and their families.

Functions. VLB offers qualifying veterans, military members, and their spouses low-interest loans to purchase land, buy or build homes, or make home improvements. The agency operates eight state veterans homes that provide long-term skilled nursing home care, with a ninth home scheduled to open this year. Four state veterans cemeteries operated by VLB provide burial and interment services. The agency also operates a call service center that provides benefit information and assistance services and conducts other marketing and outreach initiatives.

Governing structure. VLB is governed by a three-member board. The Texas Constitution establishes that the land commissioner serves as the board chairman, and the governor appoints two citizen members to serve four-year terms, including one with experience in veterans issues and one with finance experience. The chief clerk of GLO may act as the chairman in the commissioner's absence.

Funding. The agency is completely funded from investment income, loan repayment proceeds, and federal funds and does not receive any general revenue funds. VLB has constitutional authority to issue bonds to fund the veterans land, housing assistance, and home improvement loan programs. In fiscal 2017, VLB's revenue totaled about \$1.2 billion, primarily from

loan repayments and investment earnings associated with VLB-issued bonds, federal grant funds for the state veterans homes and cemeteries, and interagency contracts for administration of the veterans call center.

Staffing. In fiscal 2017, VLB employed 113 staff, including one on-site representative located at each of the eight state veterans homes and each of the four veterans cemeteries. The Legislature does not allocate specific full-time equivalent positions to VLB as all staff are GLO employees. GLO staff manage VLB operations by providing administrative support, including financial and budget management, appraisal and survey, information system, internal audit, legal, and other services.

As a constitutionally created entity, VLB cannot be abolished through the Sunset review process.

DIGEST: CSSB 607 would expand the land loan program operated by the Veterans' Land Board (VLB) to members of the Texas State Guard. The bill would require a Sunset review in 2031 and every 12th year after.

Land loans. A member of the Texas State Guard could qualify for the land loan program if at the time of application the person had completed at least 10 years of service and was not considered to have been dishonorably discharged.

Standard recommendations. VLB would be required to develop and implement policies that clearly separated the policymaking responsibilities of the board and the management responsibilities of the executive secretary, assistant executive secretary, and staff.

CSSB 607 would update standard Sunset across-the-board requirements related to board member training and separation of responsibilities. Board members would have to sign and submit to the land commissioner a statement acknowledging they had received and reviewed the training manual.

The bill would take effect September 1, 2019.

SUPPORTERS CSSB 607 would support long-term members of the Texas State Guard by

SAY: making them eligible to borrow up to \$150,000 to purchase land through the Veterans Land Loan Program. Providing this benefit would appropriately help members of the state guard, whose mission is to assist state and local authorities during emergencies and disaster relief operations, conduct homeland security activities, and provide communications support to the Texas Army National Guard and Texas Air National Guard. The State Guard played a critical role in responding to Hurricane Harvey but was left understaffed. Providing access to the low-interest land loan program would help with needed recruiting to replenish the ranks.

Other provisions of the bill would strengthen the land board by implementing standard recommendations of the Sunset Advisory Commission for board member training and separation of responsibilities.

OPPONENTS SAY: CSSB 607 would improperly expand the Veterans Land Loan Program to individuals who did not serve in the nation's armed services. While Texas State Guard members provide important functions in responding to emergencies, so do police officers and other first responders who would not be eligible for the loans. The inclusion of individuals who were not military veterans also could raise legal questions related to the tax-exempt status of the bonds that finance the loan program.

SUBJECT: Continuing the State Office of Risk Management

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — Martinez Fischer, Darby, Beckley, Collier, Landgraf, Parker,
Patterson, Shine

0 nays

1 absent — Moody

SENATE VOTE: On final passage, March 27 — 31-0

WITNESSES: *On House companion bill, HB 1515:*
For — None

Against — None

On — Todd Holt, State Office of Risk Management; (*Registered, but did not testify:* Tamara Aronstein, Sunset Advisory Commission; Deea Western, State Office of Risk Management)

BACKGROUND: The State Office of Risk Management (SORM) was created by the Legislature in 1997 to protect the state's employees and assets. In 2001, the 77th Legislature enacted HB 1203 by Brimer, which extended SORM's responsibilities to include oversight of state agency purchases of insurance coverage other than health or life insurance, such as property and casualty insurance and liability insurance.

In order to efficiently and cost-effectively reduce and control risk to the state's employees and assets, SORM administers the workers' compensation program for state entities, coordinates state entities' insurance purchases, and assists entities in developing and implementing continuity of operations plans. SORM also administers guidelines for a comprehensive risk management program and assists state entities in developing such programs.

Governing structure. SORM is governed by a board of five governor-appointed members. Board members serve staggered six-year terms and must have demonstrated experience in insurance and insurance regulation, workers' compensation, and risk management administration.

Funding. SORM does not directly receive general revenue funds. Instead, it receives payments for services it provides to a total of 265 state entities. In fiscal 2017, SORM received \$48.9 million in total revenue, of which 99 percent resulted from agency assessments. SORM's largest expenditure in fiscal 2017, at 80 percent, was for workers' compensation payments.

Staffing. SORM employed 107 staff based in Austin in fiscal 2017. The largest share of employees worked in the workers' compensation division.

SORM would be discontinued on September 1, 2019, if not continued in statute.

DIGEST: SB 612 would continue the State Office of Risk Management (SORM) until September 1, 2031, and require it to review and update its risk management program regularly. The bill also would modify the deadline by which state agencies were required to submit their annual reports to SORM and expand SORM's board member training program.

Risk management program. SB 612 would require SORM to review the guidelines for its comprehensive risk management program at least every two years to determine whether they were appropriate and current. The office would have to update the guidelines at least every five years to be consistent with up-to-date industry best practices and current law.

In updating the guidelines, SORM would be required to solicit feedback from state entities regarding topics to include in the guidelines and ways to make the guidelines more user-friendly.

SORM would have to conduct its first round of reviews and updates by September 1, 2020.

State agencies' reports to SORM. State agencies would have to send their required annual reports to SORM's director by the 60th day after the

last day of each fiscal year, instead of the 60th day before the last day of each fiscal year.

Board member training program. SB 612 would expand the training program board members would be required to complete to include information about the law governing the office's operations, the scope and limitations of the board's rulemaking authority, and other laws applicable to members of a state policymaking body in performing their duties.

SORM's director would have to create a training manual and distribute it to board members annually. Board members would need to sign and submit a statement to the director acknowledging that they had received and reviewed the training manual.

These training requirements would apply to board members appointed before, on, or after the bill's effective date. Board members who had completed the training program in effect before September 1, 2019, would need to complete the additional training required by the bill and could not vote, deliberate, or be counted as a member in attendance at a meeting held on or after December 1, 2019, until they completed the additional training.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

SB 612 would allow the State Office of Risk Management (SORM) to continue its important work protecting the state's employees and assets and would make certain operational improvements to the office.

By requiring SORM to review and update its comprehensive risk management guidelines regularly and gather feedback from stakeholders, the bill would improve the state's risk management program and provide state entities with up-to-date, easy-to-use information on risk management. Additionally, SB 612 would improve the quality of risk management data collected and reported by SORM by giving state entities adequate time to gather and submit their data before the end of the fiscal year. Currently, state entities are required to submit their data to SORM 60 days before the end of the fiscal year, but some state entities do not have access to complete datasets before the end of the fiscal year and

would benefit from a later deadline.

The bill also would promote good governance practices by expanding the training program for SORM board members and requiring board members to acknowledge that they had received and reviewed all training materials.

OPPONENTS
SAY:

No concerns identified.

SUBJECT: Continuing the Finance Commission and related finance agencies

COMMITTEE: Pensions, Investments, and Financial Services — favorable, without amendment

VOTE: 7 ayes — Murphy, Vo, Capriglione, Flynn, Gervin-Hawkins, Lambert, Wu
0 nays
4 absent — Gutierrez, Leach, Longoria, Stephenson

SENATE VOTE: On final passage, March 27 — 31-0

WITNESSES: *On House companion bill, HB 1569:*
For — (*Registered, but did not testify:* Meredyth Fowler and Karen Neeley, Independent Bankers Association of Texas; Mandy Balch, Seller Finance Coalition; Billy Phenix, Texas Association of Builders; Celeste Embrey, Texas Bankers Association; John Fleming, Texas Mortgage Bankers Association)

Against — None

On — Charles Cooper, Texas Department of Banking (*Registered, but did not testify:* Caroline Jones, Department of Savings and Mortgage Lending; Carissa Nash, Sunset Advisory Commission)

BACKGROUND: The Finance Commission of Texas is the policymaking body that oversees the Texas Department of Banking (DOB), Office of Consumer Credit Commissioner (OCCC), and Department of Savings and Mortgage Lending (SML). The three agencies work with the commission to regulate the finance industry in the state.

Finance Commission. In 2009, DOB, OCCC, and SML were given self-directed semi-independent status by the Legislature, which removed them from the legislative appropriations process and gave the finance commission greater oversight responsibility for the agencies. The

commission has also been tasked by the Legislature with ensuring that state depository and lending institutions function as a system.

In order to fulfill its charges, the Finance Commission hires and oversees the commissioner of each finance agency, conducts public hearings and adopts rules for each agency, and approves the fees charged to regulated industries, agency expenditures, and overall agency performance. The commission also interprets the home equity lending provisions of the Texas Constitution, administers the Texas Financial Education Endowment, and manages the internal auditor.

Governance. The Finance Commission consists of 11 members appointed by the governor with the advice and consent of the Senate to six-year staggered terms. Five members represent the finance industry and six members represent the public. The governor appoints the presiding officer.

The Finance Commission appoints one of the three finance agency commissioners to serve as the commission's executive director to handle administrative tasks. Since May 2014, the banking commissioner has served this role.

Oversight. Across the three finance agencies, the Finance Commission oversaw \$40.9 million in expenditures, \$43 million in revenue, \$39.8 million in reserve fund balances, and \$4.1 million in the Texas Financial Education Endowment grant fund in fiscal 2017. The commission also oversees the agencies' staff, which numbered 314 at the end of fiscal 2017.

The Finance Commission approves the finance agencies' rules and budget but has no direct role in licensing decisions or the management of consumer complaints, which are under the purview of each agency's commissioner.

The commission is also statutorily required to consider appeals of orders issued by the banking commissioner against banks or trust companies, which remain in effect unless stayed by the Finance Commission.

Department of Banking. DOB is an independent agency that regulates

the state's financial service industries, including state-chartered banks, trust companies, money services business, foreign banks, and the financial aspects of some death care services.

The department works to maintain a safe, sound, and competitive financial services system in the state by:

- approving new charters, charter conversions, mergers, and other structural or operational changes for state-chartered banks, trust companies, and foreign banks operating in Texas;
- licensing and registering money services businesses, certain death care service providers, and other entities;
- examining regulated entities for sound operations and compliance with state and federal laws; and
- enforcing the Texas Finance Code by investigating and resolving complaints and taking appropriate disciplinary action.

Governance. The Finance Commission hires each of the agency's commissioners, who are directly responsible for all licensing and enforcement decisions.

Funding. DOB does not receive a legislative appropriation but is funded by industry fees. In fiscal 2017, the agency collected about \$26.3 million in revenue, primarily from bank and trust assessments. That year the agency spent about \$26.1 million and maintained a fund balance of \$14.7 million at the end of fiscal 2017.

Staffing. At the end of fiscal 2017, DOB employed 178 full-time staff. About 121 staff travel throughout the state examining state-chartered banks, money services businesses, and other regulated entities.

Department of Savings and Mortgage Lending. SML was created by the Legislature to regulate state savings and loan associations, commonly called thrifts. Today, the Texas thrift industry is made up entirely of state saving banks, whose assets primarily consist of residential mortgage loans, and SML is charged with ensuring a healthy mortgage lending environment and maintaining sound state savings banks in the state. The agency accomplishes this by:

- approving new charters, charter conversions, mergers, and other structural or operational changes for state savings banks;
- licensing mortgage companies, residential mortgage loan originators, and other entities that originate mortgage loan services for properties in Texas;
- examining state savings banks and mortgage licensees for sound operations and compliance with state and federal laws; and
- enforcing the Texas Finance Code by investigating and resolving complaints against licensees and taking disciplinary action when appropriate.

Governance. The Finance Commission hires each of the agency's commissioners, who are directly responsible for all licensing and enforcement decisions.

Funding. SML does not receive a legislative appropriation but is funded through industry fees. In fiscal year 2017, the agency collected \$6.5 million in revenue, primarily from licensing fees on mortgage industry licensees. That same year, the agency spent about \$5.8 million. SML maintained a fund balance of \$12.7 million at the end of fiscal 2017.

Staffing. At the end of fiscal year 2017, the agency employed 53 staff. About 23 staff travel throughout the state examining state savings banks and mortgage industry licensees, and the remainder work at the agency's Austin headquarters.

Expiration. The Finance Commission, Texas Department of Banking, and Department of Savings and Mortgage Lending would expire on September 1, 2019, unless continued in statute.

DIGEST:

CSSB 614 would continue the Finance Commission, Texas Department of Banking (DOB), and Department of Savings and Mortgage Lending (SML) until September 1, 2031. The bill would make certain substantive changes to the agencies and also would implement several across-the-board Sunset recommendations.

Advisory committees. CSSB 614 would individually authorize the

Finance Commission, DOB, and SML to appoint advisory committees to assist the commission and finance agencies in performing their respective duties. The commission and agencies would have to specify each committee's purpose, powers, and duties, and require each committee to report to the commission or agency regarding the committee's activities and the results of its work.

Permits and certificates. The Finance Commission would be authorized to establish by rule the terms of permits to sell prepaid funeral benefits and of certificates of authority to operate perpetual care cemeteries. If the commission prescribed the term of a permit or certificate for a period other than one year, the commission would have to prorate the required fee as necessary to reflect the term.

The bill also would remove requirements that cemetery brokers and private child support enforcement agencies register with DOB. On the effective date of the bill, any certificate of registration for cemetery brokers or private child support enforcement agencies would expire. No person would be entitled to a refund of a fee paid for such a certificate before the effective date of the bill.

The requirement that a residential mortgage loan originator licensee applicant be of "good moral character" also would be removed from statute.

Appeals. CSSB 614 would change the process by which an order of the banking commissioner could be appealed so that parties could no longer appeal agency decisions to the Finance Commission. Instead, a person affected by a final order from DOB could appeal the order by filing a petition for judicial review in a district court in Travis County.

Rulemaking and dispute resolution. The Finance Commission would be required to develop a policy to encourage the use of negotiated rulemaking procedures for the commission's adoption of rules applicable to DOB and SML. The policy also would have to encourage the use of appropriate alternative dispute resolution procedures by both DOB and SML.

CSSB 614 would require DOB and SML to maintain systems to promptly and efficiently act on complaints filed with the agencies and would remove certain SML complaint filing requirements.

Training requirements. The bill also would update training requirements for the finance agencies. The commissioner of each agency would have to create a training manual including required information applicable to the commissioner's agency and annually distribute a copy of the training manual to each member of the finance commission. The commissioners of each finance agency could collaborate and jointly create one training manual including information applicable to each agency. Each member of the commission would have to sign and submit to the appropriate commissioner a statement acknowledging that the member had received and reviewed the manual.

These training requirements would apply to a member of the Finance Commission appointed before, on, or after the bill's effective date. If a member of the commission had completed the required training program before the bill's effective date, the member would have to acknowledge that the member received and reviewed the required training manual. A member of the commission could not vote, deliberate, or be counted as a member in attendance at a commission meeting held on or after December 1, 2019, until the member acknowledged the receipt and review of the training manual.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

CSSB 614 would continue the Finance Commission, Texas Department of Banking (DOB), and Department of Savings and Mortgage Lending (SML), which help protect the state's finance industry, while making statutory changes that would improve the agencies' efficiency and effectiveness.

The bill would discontinue unnecessary regulatory burdens, such as the requirement that cemetery brokers and private child support enforcement agencies register with DOB. This would ensure that the finance agencies were imposing the least amount of regulation necessary to protect the public interest. DOB also would be given the rulemaking authority to

establish certain license terms, ensuring the agency had the flexibility to reduce the time spent on processing renewals and use its time and resource effectively and efficiently.

By removing the Finance Commission as an avenue for appeal for orders issued by the banking commissioner, CSSB 614 would bring the agencies' appeals process into compliance with the Administrative Procedures Act. Under the act, the appropriate avenue for appeals in an administrative hearing is district court, and that is where the bill would direct appeals of DOB orders.

The bill also would revise complaint requirements, giving the finance agencies the necessary flexibility to adopt updated rules and procedures to resolve complaints in a timely and transparent manner.

Retaining SML as an agency separate from DOB is appropriate, as it would allow the agency to continue to effectively regulate the fluctuating number of savings and loan institutions in the state.

**OPPONENTS
SAY:**

CSSB 614 should abolish SML as a separate state agency and transfer regulation of state savings banks and the mortgage industry to DOB. Having two separate agencies regulate two types of banks is inefficient, and consolidating bank examination and supervision within one state agency would allow DOB to monitor and report on the complete banking and mortgage industry in Texas and to have a more holistic picture of local economies, market changes, and regulatory impacts on community banks.

SUBJECT: Adopting certain Sunset recommendations for the Nueces River Authority

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 9 ayes — Larson, Metcalf, Farrar, Harris, T. King, Lang, Nevárez,
Oliverson, Ramos

0 nays

2 absent — Dominguez, Price

SENATE VOTE: On final passage, April 8 — 30-0

WITNESSES: None

BACKGROUND: The Nueces River Authority (NRA) was created by the Legislature in 1935 to develop the natural resources of the Nueces River basin in southwestern Texas.

Functions. The authority is authorized to build and operate reservoirs, conduct wastewater treatment, sell raw and treated water, engage in flood control, generate and sell hydroelectric power, acquire property through eminent domain, build and manage recreational areas within its river basin, and test and monitor water quality. NRA also serves as a voting member of Region L and Region N regional water planning groups and the designated administrative agent for Region N.

Governing structure. The authority is governed by a 21-member board appointed by the governor. Four board members must reside in Nueces County, and two each must reside in San Patricio and Jim Wells counties. The other members may reside in any of the other 19 counties in NRA's jurisdiction, with no more than two members coming from any one county. Board members serve staggered, six-year terms, and the board meets quarterly, with yearly elections for the chairmanship.

Funding. NRA receives no state appropriations and is not authorized to assess taxes. In fiscal 2017, the authority collected and spent about \$6.5

million. About 83 percent of its funding is received through wastewater grants, and about the same percentage of its budget in fiscal 2017 was dedicated to a wastewater project in Leakey and other parts of Real County.

Staffing. In fiscal 2017, NRA employed nine full-time staff, three of whom worked in NRA's headquarters in Uvalde, four in a Corpus Christi field office and two in its Utility Division office in Leakey. NRA also employs six part-time staffers to assist in administering public education programs.

SB 523 by Birdwell, enacted by the 84th Legislature in 2015, subjected the Nueces River Authority to limited Sunset review every 12 years as if it were a state agency, except that the authority may not be abolished.

DIGEST:

SB 625 would adopt certain Sunset Advisory Commission recommendations for the Nueces River Authority (NRA). The bill also would require the authority to undergo Sunset review again as if it were a state agency scheduled to be abolished September 1, 2031.

NRA would be required to adopt and regularly update a five-year strategic plan to establish its mission and anticipate activities. The plan would be published on the authority's website.

Standard recommendations. SB 625 would apply standard Sunset provisions requiring that:

- the governor designate a board member as the presiding officer;
- certain per diems for board members be repealed;
- the board develop policies to clearly separate the policymaking duties of the board and the management duties of the manager and staff;
- board members receive appropriate training on the laws and policies relating to the authority;
- the board develop alternative dispute resolution procedures to resolve disputes within the authority's jurisdiction; and
- the board develop and implement policies for public engagement at

board meetings and a system to track and act on complaints.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

SB 625 would apply good government practices to increase the transparency and public accountability of the Nueces River Authority. The bill also would benefit the authority and its customers by ensuring that it had a strategic plan in place to serve the long-term needs of the authority's mission in the river basin.

The bill would adopt certain across-the-board recommendations from Sunset, including a provision requiring the governor to appoint the presiding officer of the board, which would ensure that the river authority's policy goals were integrated with those of the rest of the state.

**OPPONENTS
SAY:**

SB 625 could deprive the river authority of locally oriented leadership by requiring that the president of the board be appointed by the governor rather than by peers in the river authority. The current practice avoids this unnecessary political appointment by trusting members from local communities to select an appropriate president based on earned respect and leadership ability.

SUBJECT: Adopting certain Sunset recommendations for GBRA

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 10 ayes — Larson, Metcalf, Farrar, Harris, T. King, Lang, Nevárez,
Oliverson, Price, Ramos

0 nays

1 absent — Dominguez

SENATE VOTE: On final passage, April 8 — 30-0

WITNESSES: None

BACKGROUND: The Guadalupe-Blanco River Authority (GBRA) was created by the Legislature in 1933 to develop, conserve, and protect the water of the Guadalupe and Blanco rivers.

Functions. GBRA may build and operate reservoirs to develop and conserve water resources, conduct water and wastewater treatment to provide water and wastewater services, engage in flood control, generate and sell hydroelectric power, acquire property through eminent domain, build and manage recreational areas within its river basins, test and monitor water quality, and serve as a voting member of Region L Regional Water Planning Group.

Governing structure. The authority is governed by a nine-member board appointed by the governor. Each board member must be a property taxpayer and must reside in of one of the 10 counties in GBRA's jurisdiction, with no more than one member from each county serving at the same time. Board terms are staggered, six-year terms. The board meets monthly and elects a chair each year.

Funding. The primary source of funding for GBRA is through water and wastewater sales to wholesale and retail customers. Other sources of funding include selling hydroelectric power, laboratory fees, and

recreational fees. It receives no state appropriations and is not authorized to assess taxes. In fiscal 2017, the authority collected about \$55.6 million and spent about \$55.8 million.

Staffing. In fiscal 2017, GBRA employed 172 staff, about 70 percent of whom were located in GBRA's headquarters in Seguin or its Port Lavaca authority.

SB 523 by Birdwell, enacted by the 84th Legislature in 2015, subjected the Guadalupe-Blanco River Authority to limited Sunset review every 12 years as if it were a state agency, except that the authority may not be abolished.

DIGEST:

SB 626 would adopt certain Sunset Advisory Commission recommendations for the Guadalupe-Blanco River Authority (GBRA). The bill also would require GBRA to undergo Sunset review again as if it were a state agency scheduled to be abolished September 1, 2031.

Board of directors. SB 626 would repeal the requirement that each board director receive a per diem for meetings, board business, and reimbursement for travel expenses.

The bill would require contracts that involve amounts greater than \$100,000, rather than amounts greater than \$10,000, to receive a vote of approval from at least five board members.

The term of the serving president of the board of directors would expire September 1, 2019, but the president could continue serving in that capacity until a successor was appointed and had qualified. The bill would require the governor by September 2, 2019, to designate a board member as the presiding officer, who would serve in that capacity at the pleasure of the governor.

SB 626 would repeal a provision prohibiting a board member, officer, agent, or employee from being directly or indirectly interested in a contract for the purchase of any property or construction of any work by or for the authority.

The bill would require the board to develop policies to clearly separate their own policymaking responsibilities from the management responsibilities of the general manager and staff of GBRA.

Board training. The bill would require the general manager of GBRA to create a training manual specified in the bill and distribute it annually to each member of the board of directors. Board members could not vote, deliberate, or be counted at meetings until they had received and reviewed the manual.

Other provisions. The bill would require the board to develop a policy to encourage alternative dispute resolution procedures in accordance with the Governmental Dispute Resolution Act. The board also would have to develop and implement policies to provide the public the opportunity to speak on any issue within the board's jurisdiction and would have to maintain a system to act on complaints.

GBRA would be required to adopt an asset management plan, to be approved annually by the board as part of the budgeting process and be publicly posted on GBRA's website.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

SB 626 would apply several across-the-board recommendations from the Sunset Advisory Commission to the Guadalupe-Blanco River Authority (GBRA) to increase transparency and public accountability. GBRA has served its community for decades providing the water resources vital for its diverse and growing population, and it has a proven record of developing resources to meet these demands.

The bill's provision calling for the development of an asset management plan would help the GBRA to better strategize to address the region's long-term issues of growing population and aging infrastructure.

**OPPONENTS
SAY:**

SB 626 would not address the issue that the GBRA, created nearly a century ago to serve rural communities, is no longer as relevant to the growing water needs of the region. A single river authority cannot fairly address the competing demands of urban growth between Austin and San

Antonio, rural areas of the Hill Country, and the rapidly industrializing Gulf Coast. The bill should be amended to direct the Texas Commission on Environmental Quality to determine whether the region would be better served by dividing and reconfiguring the GBRA to better represent the river basin's diverse constituencies.

SUBJECT: Adopting certain Sunset recommendations for the Red River Authority

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 9 ayes — Larson, Metcalf, Farrar, Harris, T. King, Lang, Nevárez,
Oliverson, Ramos

0 nays

2 absent — Dominguez, Price

SENATE VOTE: On final passage, April 9 — 31-0

WITNESSES: None

BACKGROUND: The Red River Authority (RRA) was created by the Legislature in 1959 to develop, conserve, and protect from pollution the water of the Red River and its tributaries.

Functions. RRA is authorized to build and operate reservoirs to develop and conserve water resources, conduct water and wastewater treatment to provide water and wastewater services, engage in flood control, generate and sell hydroelectric power, acquire property through eminent domain, build and manage recreational areas within its river basins, test and monitor water quality, and serve as a voting member of and designated administrative agent for the Region B Regional Water Planning Group.

Governing structure. The authority is governed by a nine-member board consisting of three property taxpayers from each of RRA's three regions, appointed by the governor. Board member terms are six-year staggered terms, and the board meets quarterly, with yearly elections for the chairmanship.

Funding. RRA receives no state appropriations and is not authorized to assess taxes. In fiscal 2017, the authority collected about \$6.2 million and spent about \$5.4 million. More than 80 percent of its funding is through water and wastewater sales, primarily to rural customers. Other sources of

funding include grants and laboratory fees.

Staffing. In fiscal 2017, RRA employed 28 staff, most of whom work out of the authority's headquarters in Wichita Falls or at the authority's water treatment plants.

SB 523 by Birdwell, enacted by the 84th Legislature in 2015, subjects the Red River Authority to limited Sunset review every 12 years as if it were a state agency, except that the authority may not be abolished.

DIGEST:

SB 627 would adopt certain Sunset Advisory Commission recommendations for the Red River Authority (RRA) and would require RRA to undergo Sunset review again as if it were a state agency scheduled to be abolished September 1, 2031.

The bill would require the state auditor to conduct an audit of RRA no earlier than December 1, 2021, to evaluate whether the authority had addressed the challenges identified by the Sunset Advisory Commission and submit a report no later than December 1, 2022.

SB 627 would require RRA's board of directors to establish a process to ensure that, before RRA made a significant rate change, it would provide affected persons with notice of the proposed change and an opportunity for public comment. The process would have to include notice of the proposed change both on RRA's website and in an affected person's utility bills.

RRA would be required to adopt an asset management plan as specified in the bill. The plan would have to be approved annually by the board as part of the budgeting process and be publicly posted on RRA's website.

The bill would allow RRA's board of directors by resolution to increase board members' per diem and traveling expenses.

Standard recommendations. SB 627 would apply standard Sunset across-the-board provisions requiring that:

- the governor designate a board member as the presiding officer;

- the board adhere to the standard grounds for removing a member from the board;
- the board develop policies to clearly separate the policymaking duties of the board and the management duties of the manager and staff, including prohibiting a board member from serving as the general manager;
- board members receive appropriate training on the laws and policies relating to the authority;
- the board develop alternative dispute resolution procedures to resolve disputes within the authority's jurisdiction; and
- the board develop and implement policies for public engagement at board meetings and a system to track and act on complaints.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

SB 627 would apply good government practices to the Red River Authority to ensure it met minimum safety and transparency standards. One of the Sunset Advisory Commission's findings was that the authority did not meet certain water quality standards for decades and did not adequately evaluate all potential solutions to address the problem. The bill would address this by requiring the authority to adopt a comprehensive asset management plan to help it make more informed decisions about its infrastructure and how to best pay for necessary future improvements for safe drinking water. The bill also would require RRA to adopt a policy to ensure meaningful public input on significant rate changes, increasing transparency to its customers.

**OPPONENTS
SAY:**

SB 627 would stretch the already strained resources of the Red River Authority by mandating increased costs in nonessential areas. The size and complexity of the authority's jurisdiction makes a formal asset management plan cost-prohibitive. Implementing any additional notice requirements would necessitate increases in billing software and postage costs, which would be passed on to the authority's customers.

SUBJECT: Continuing the Texas Alcoholic Beverage Commission

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 9 ayes — T. King, Goldman, Geren, Guillen, Harless, Hernandez, K. King, Paddie, S. Thompson

0 nays

2 absent — Herrero, Kuempel

WITNESSES: For — Peter Salatich, Anheuser-Busch; Rick Donley, The Beer Alliance of Texas; Adam DeBower, Texas Craft Brewers Guild; (*Registered, but did not testify*: Price Ashley, Constellation Brands; Robert Floyd, Southern Glazers; Kyle Frazier, Texas Wine and Grape Growers Association; Edward Cooper, Total Wine & More; Joey Bennett, Wine and Spirits Wholesalers of Texas; Tyler Rudd, Wine Institute)

Against — None

On — Merrell Foote and Emily Johnson, Sunset Advisory Commission; Bentley Nettles, Texas Alcoholic Beverage Commission; Carine Martinez, Texas Public Policy Foundation; Keith Strama, Wholesale Beer Distributors of Texas

BACKGROUND: The Texas Alcoholic Beverage Commission (TABC) regulates the Texas alcoholic beverage industry. The agency licenses manufacturers, distributors, and sellers of alcoholic beverages, enforces the Texas Alcoholic Beverage Code, issues certificates to those selling and serving alcohol, develops public education materials related to alcohol, and collects certain taxes.

Governing structure. A three-member commission oversees the agency, and commissioners serve six-year, staggered terms. The governor appoints the commissioners with the advice and consent of the Senate and appoints the chair of the commission. Commissioners may not have any financial

connection to anyone engaged in the alcoholic beverage industry.

Under Alcoholic Beverage Code sec. 5.05, no one may be appointed to the commission, hold an office under the commission, or be employed by the commission who:

- has any financial connection with anyone engaged in an alcoholic beverage business;
- holds stocks or bonds in an alcoholic beverage business; or
- has a pecuniary interest in an alcoholic beverage business.

Under Alcoholic Beverage Code sec. 5.11, the commission is required to appoint an administrator, also known as the executive director, to administer the code.

Funding, staffing. In fiscal 2017, TABC spent about \$54.4 million on agency operations, \$48.4 million of which was appropriated to the agency. The agency collected about \$76 million in fees and other revenues and sent about \$21.3 million to the state's general revenue fund. Law enforcement efforts to enforce the Alcoholic Beverage Code's public safety provisions accounted for 51 percent of TABC's expenditures.

The agency had about 580 employees in fiscal 2017, about 240 of whom were commissioned peace officers. The agency is headquartered in Austin and has five regional offices, 43 field offices, and 30 international land and sea ports of entry.

Three tier-system. Following the repeal of Prohibition in 1933, Texas implemented a three-tier system of manufacturers, distributors, and retailers to regulate the production and sale of alcohol. The system prohibits close ties between manufacturers and retailers by requiring retailers to buy their product from distributors, not directly from manufacturers. TABC oversees the three-tier system and licenses businesses in each tier. TABC issues about 75 types of licenses and permits across the three tiers, and in fiscal 2017, more than 130,000 active licenses and permits were held by 60,000 entities and individuals.

Manufacturers of alcoholic beverages, the first tier, can produce alcohol

and sell it to those in the second or middle tier, wholesalers and distributors. Those in the middle tier buy alcohol from manufacturers and sell it to retailers. Licensees in this middle tier that handle liquor and wine are called wholesalers, and those that handle beer are called distributors. Retailers are the third tier and sell alcohol to consumers. Retailers can be package stores, grocery stores, convenience stores, bars, or restaurants. Permit and license holders in one tier cannot have financial ties or certain familial ties to those in other tiers.

The Texas Alcoholic Beverage Commission will be abolished September 1, 2019, unless continued by the Legislature.

DIGEST:

CSHB 1545 would continue the Texas Alcoholic Beverage Commission until September 1, 2031, and make several other changes to the laws governing the agency, including:

- expanding the size of the commission and revising the restrictions on conflicts of interest for commission members;
- revising the types of licenses and permits issued by the commission, including reducing the total number and combining beer and ale into one category;
- repealing statutory fees and requiring the commission to set fees by rule;
- revising the agency's process for approving, denying, and protesting license and permit applications;
- revising the agency's enforcement and inspection processes; and
- revising statutes governing product registration and labeling.

Commission. The Texas Alcoholic Beverage Commission would be expanded from three to five members. The governor would have to appoint two additional members to the commission by December 1, 2019.

The bill would revise and narrow the conflict of interest provisions prohibiting persons with certain financial interests in or connections with the alcoholic beverage industry from being commission members, holding office under the commission, or being employed by the commission. Under CSHB 1545, a person would be considered to have a conflict of

interest if they held a specific percentage of an alcoholic beverage business. This would replace the current definition, which applies to individuals with any financial connection with someone engaged in an alcoholic beverage business or who have other pecuniary interests in such a business.

Under the bill, individuals could not be appointed to the commission, hold an office under the commission, or be employed by the commission if they were employed by an alcoholic beverage business or had a financial interest in an alcoholic beverage business. Financial interest would be defined as owning or controlling, directly or indirectly, an ownership interest of:

- at least 5 percent in a single alcoholic beverage business, including the right to share in profits, proceeds, or capital gains;
- at least 5 percent cumulative interest, including the right to share in profits, proceeds, or capital gains, in multiple alcoholic beverage businesses; or
- having a spouse or child with such an interest.

The definition of financial interest would not include ownership under a retirement plan, blind trust, or insurance coverage, or ownership of less than 5 percent in a corporation.

The bill would authorize the commission to establish advisory committees. Government Code provisions on the operation of state agency advisory committees would apply to committees created by the commission.

Permits, licenses, fees. The bill would reduce the number of licenses and permit types issued by TABC from 75 to 36, according to the Sunset Advisory Commission. Some licenses and permits would be combined and others would be eliminated.

Beer, ale as malt beverages. CSHB 1545 would eliminate the distinction between beer and ale throughout the Alcoholic Beverage Code by referring to both as "malt beverages" and combining their licensing, permitting, and regulations into one category. In most cases, CSHB 1545

would continue the provisions relating to beer and apply them to the new combined category. For example, the bill would apply the hours of sale for beer and beer marketing regulations to all malt beverages. The term "brewers" would be used to refer to makers of malt beverages. The excise tax for beer of nearly 0.194 cents per gallon would be applied to all malt beverages, instead of the current ale tax rate of 0.198 per gallon.

The current requirement that retailers pay beer distributors with cash, check, or electronic payment would be applied to payments made to distributors of malt beverages.

Brewers and distributors of malt beverages would be required to register with the commission each warehouse used to store malt beverages, and TABC would have to establish rules about what information was included with the registration. Certain current permit requirements relating to ale and warehouses would be eliminated. Current prohibitions on beer manufacturers and distributors serving beer at storage warehouses would be applied to malt beverages.

Areas that had approved the retail sale of beer, but not ale, in a local option election before September 1, 2021, would be subject to a grandfather clause and would continue to only allow the sale of beer. In these areas, only malt beverages with 5 percent alcohol or less per volume, the threshold currently applied to beer, could be sold unless a subsequent local option election approved the sale of all malt beverages.

Other licenses and permits. CSHB 1545 would combine some licenses and permits. These would include combining permits to sell or serve alcohol on trains, boats, airlines, and buses into a new permit related to passenger transportation vehicles and combining certain temporary permits for non-profit organizations to sell or auction alcoholic beverages.

The bill also would combine certain licenses and permits that businesses currently are required to obtain when conducting an activity that might be subordinate to their primary license or permit. These changes would include authorizing the holder of a package store permit to conduct tastings, authorizing the holder of a wholesaler's permit to store liquor, and authorizing hotels holding a mixed beverage permit to provide

minibars without obtaining a separate license. The bill also would combine various permits and licenses for late-hours selling into one late-hours certificate.

The bill would eliminate other licenses and permits identified by the Sunset Advisory Commission as obsolete and deregulate holders of some licenses and permits, including agents who are employees of manufacturers and distributors and industrial alcohol businesses.

Fees. CSHB 1545 would authorize TABC to establish fees for licenses, permits, and certificates by rule and would eliminate statutory references to fees and surcharges. The commission would be required to develop a process for setting fees that ensured the fees would cover the commission's costs in administering the code. TABC would be required to periodically review and adjust the fees to ensure regulatory costs were fairly allocated among certificate, permit, and license holders.

TABC would have to adopt rules setting the fees for each certificate, license, and permit by September 1, 2021, and the new fees would apply only to an original or renewal certificate, license, and permit issued on or after that date.

Application approval, denial, and protest process. CSHB 1545 would restructure the agency's process for approving, denying, and protesting license and permit applications and would designate the roles of the commission, the administrator, and State Office of Administrative Hearing (SOAH) in that process. By December 31, 2020, the agency would have to adopt rules to implement the process.

The commission would have the authority to issue or deny applications for original or renewal permits and licenses. The administrator's current statutory authority to grant or refuse to issue permits and licenses would be eliminated, but the commission would be able to delegate authority to the administrator to issue permits and licenses. The commission would have sole authority for the final denial of licenses and permits. The role of county judges in making some decisions related to protests about beer applications would be eliminated.

The bill would establish a process for handling protests of denials of applications, including the referral of a protested application to SOAH for a hearing in certain circumstances. In some cases, applicants would be able to request SOAH hearings. After all administrative remedies had been exhausted, applicants could appeal a permit or license denial by the commission to a Travis County district court.

The bill would revise the statutes governing the rights of those outside the agency to protest certain permit or license applications or renewals. The public would be authorized to protest certain applications, and the commission could expand the public's authorization to protest to include other applications. The bill would list state and local government officials who would be authorized to protest any application for a permit or license.

Enforcement and inspections. The bill would outline the disciplinary authority of the commission and the administrator over those regulated by the commission, and the commission could use rules to delegate authority to take disciplinary and enforcement actions to the administrator. The rules would have to specify a threshold for the types of disciplinary and enforcement actions that were delegated to the administrator. The commission would be required to make the final decision on disciplinary actions in contested cases that had administrative hearings.

The bill would require the commission to use rules to develop a risk-based approach that prioritized public safety when inspecting permittees and licensees. The plan could allow virtual inspections that included a review of permittees' and licensees' records or could also require a physical inspection of their premises. The plan would have to include a timeline for inspections that prioritized high-risk permittees and licensees and would have to require physical inspections of all licensees and permittees within a reasonable time. These rules would have to be adopted by January 31, 2020.

The bill would give the commission and the administrator authority to issue an emergency order to temporarily suspend a permit or license if it was determined the continued operation of the permitted or licensed business would constitute a threat to the public welfare. The bill would establish a process for holding a hearing on emergency orders and would

allow the commission to create rules for the procedures to appeal an emergency order. Proceedings would be contested cases under the Administrative Procedures Act.

CSHB 1545 would require the commission, when determining the amount of a penalty, to consider whether and how much licensees and permittees had profited from the violation if it were at least a second violation of the Alcoholic Beverage Code. The bill would allow the commission to deny an original or renewal application or to take other disciplinary action against permittees or licenses who violated orders of the commission or administrator.

Registration, labeling, and testing. CSHB 1545 would revise statutes governing product registration and label approval.

The bill would require those wanting to register malt beverages with the commission to submit a federal certificate of label approval (COLA) with a registration application. The bill would eliminate the current process involving prior TABC label approval for beer and ale and the current requirement that the content of malt beverages be tested by laboratories or the commission as part of the registration process to verify the alcohol content. All malt beverages would have a new requirement to list the alcohol content by volume on their labels.

The bill would establish a 30-day deadline for the commission to approve or deny product registrations and would require the commission to use rules to establish certain other procedures related to product registration, including procedures to accept federal COLA for registration. The commission would be able to deny registration to a product with a federal COLA if the commission determined that the product would create a public safety concern, create a cross-tier violation, or violate the Alcoholic Beverage Code.

Modernize Code Project. The bill would require the Sunset Advisory Commission staff, with assistance from the Texas Legislative Council and the Texas Alcoholic Beverage Commission, to review the Texas Alcoholic Beverage Code and make recommendations to the Sunset Advisory Commission for both a modernization and a nonsubstantive

technical revision of the code.

The review could include identifying inconsistencies in authorities and treatment of different alcoholic beverages and regulated businesses, reviewing the use of the terms "license" for beer and "permit" for other alcoholic beverages, identifying needed technical changes, and identifying changes to modernize the code within the three-tier system. The review could not consider changes to the overall three-tier regulatory system. The Texas Legislative Council would have to prepare a nonsubstantive revision of the Texas Alcoholic Beverage Code by September 1, 2022. The Sunset Advisory Commission staff would have to make recommendations to the Sunset Advisory Commission on substantive issues by the same date.

Other provisions. CSHB 1545 would state that it was the Legislature's intent to prevent human trafficking at all permitted and licensed premises, that the code should be liberally construed to carry out this intent, and that it was a duty and priority of the commission to adhere to a zero tolerance policy relating to human trafficking and related practices.

The bill would eliminate certain statutory provisions about outdoor advertising and would require the commission to adopt reasonable rules related to outdoor advertising by retail licensees and permittees on their premises. The bill also would eliminate a permit related to billboards and electric signs near retailers.

CSHB 1545 would make numerous other changes to statutes governing the TABC, including:

- adding standard Sunset across-the-board language about commission member training;
- prohibiting the disclosure under the state's public information law of certain personal records of peace officers while there is a pending internal investigation for alleged employee misconduct;
- establishing a deadline for county clerks and city secretaries to issue certifications about whether certain addresses are in wet areas and whether certain alcoholic beverages are prohibited in that area by local authority;

- giving the commission sole authority to issue orders imposing conditions on permit and license holders to abate a common nuisance and the authority to suspend or cancel permits or licenses of those who violate orders of the commission; and
- implementing other Sunset standard recommendations including replacing language throughout the code with person-first respectful language and eliminating certain reports.

Effective dates. The bill would take effect September 1, 2021, but would include several other effective dates for certain provisions. In general, provisions eliminating license and permits would be effective September 1, 2019; label approval changes would be effective September 1, 2020; and other licensing changes would be effective September 1, 2021.

**SUPPORTERS
SAY:**

The Texas Alcoholic Beverage Commission (TABC) should be continued for another 12 years because the state has an ongoing need for the commission's services, which protect public safety. No other entity has the specialized expertise necessary to regulate the alcoholic beverage industry, and no other agency could perform all of the agency's tasks regarding licensing, law enforcement, and tax collection.

Commission. CSHB 1545 would increase the size of the Texas Alcoholic Beverage Commission from three to five members, which would enable commissioners to better engage in the commission's duties and make better informed decisions. The current three-member commission can be stretched thin trying to regulate such a large industry, and commissioners are sometimes unable to engage with the full complexity and nuances of the state's alcohol regulation. Increasing the commission to five members would allow commissioners to more meaningful engage with issues before the commission and to make use of subcommittees, which would better enable commissioners to develop expertise in certain areas of the agency.

Having a larger commission also would address TABC's current risk of violating the state's open meetings requirements. Because the current commission has only three members, a quorum occurs whenever two members discuss commission business, and commissioners risk violating the Open Meetings Act if they engage in any such conversation without

advance posting. Expanding the commission to five members would remove this risk.

CSHB 1545 would update commission conflict-of-interest provisions so that there would be a bigger pool of candidates for the commission. Current law prohibits commission appointments and employment by those having "any financial connection with a person engaged in an alcoholic beverage business," which is undefined and so broad that it limits the pool of applicants. CSHB 1545 would better define a conflict of interest and recognize the complexity of today's business and investments by setting the threshold for a conflict at owning or controlling at least 5 percent ownership in an alcoholic beverage business. The bill would balance the need for qualified applicants with the need to protect against commission members with financial interests in the industry by setting this percentage at 5 percent. Setting it lower could be too restrictive given modern investment practices.

Combined permits, license. CSHB 1545 would revise TABC's licensing structure to remove overly complicated, duplicative, and unnecessary licenses that burden the agency and industry. The total number of types of alcoholic beverage licenses and permits would be reduced from 75 to 36 by removing layers of licenses, so that a primary license would include the authority to conduct other, related activities, and by eliminating obsolete or duplicative licenses and permits.

The state's regulation of beer and ale in separate categories based solely on alcohol content is outdated, redundant, and unnecessary. CSHB 1545 would combine them into one "malt beverage" category, and in most cases the regulations governing beer would be applied to the new category since beer represents the largest portion of the combined group. This would include extending the cash payment system to ale. The cash system has worked well to support healthy, fair, and competitive practices, and it would be appropriate to expand the system's use for all malt beverages.

CSHB 1545 would respect local decision-making by grandfathering in areas in which local voters had approved beer but not ale. In these areas, ale sales could not occur unless approved in a new election.

CSHB 1545 would eliminate a confusing and illogical system of statutory fees with agency surcharges and replace it with one that allows the agency to set fees by rule. The rulemaking process would allow input by stakeholders so that fees were set at appropriate and fair levels, and setting fees by rule would allow them to be adjusted when necessary rather than waiting for a legislative change.

Application approval, denial, and protest process. CSHB 1545 would revise TABC's process for approving and protesting licenses and permits to establish a more transparent and fair process that was consistent with practices at other agencies. To improve accountability, the commission would be able to delegate approvals of applications but would be required to make final denials. The bill would ensure public input was considered by clearly outlining the rights of the public and public officials in the protest process.

CSHB 1545 would eliminate county judges from certain protests relating to beer applications so that there would be a standard process statewide and so that decisions on cases that were heard by the State Office of Administrative Hearings (SOAH) would be made by experienced administrative law judges. Having a bifurcated process that sends certain protests to a county judge can result in inconsistent rulings, and county judges, who may not be attorneys, can lack experience in conducting these types of hearings. County judges would retain the ability to participate in the protest process under provisions in the bill that allow certain government officials to protest applications.

The bill also would be in line with other decisions made by the Legislature to move certain administrative hearings and decisions to SOAH. Using SOAH would promote consistency in the process and in decision-making, which would help ensure fair treatment for all parties.

Enforcement and inspections. By revamping the commission's enforcement process and mechanisms, the bill would make the most efficient and effective use of state resources. The bill would better protect the public by authorizing a risk-based inspection system while ensuring that all permittees and licensees were inspected within a reasonable time. Requiring a threshold for disciplinary and enforcement actions delegated

to staff and requiring the commission to make final decisions in certain cases would increase accountability and transparency. CSHB 1545 would not remove TABC's current requirement to offer licensees and permittees a choice between a suspension and a fine in certain situations to ensure there is balance in the disciplinary process. The agency would be given authority for temporary suspensions through emergency orders, which would allow it to address any threat to public welfare.

The bill would give the commission additional tools for enforcement and would better deter violations by allowing the commission to consider the profit made from a violation when determining the amount of a civil penalty if it was the businesses' second violation of the code. Without this ability, TABC cannot appropriately assess penalties in certain situations. For example, if a business earned more from a violation than it had to pay for the penalty, the penalty could fail to serve as an appropriate punishment or deterrent to future violations. Allowing the commission to consider the profits from violations when setting penalties would keep penalties effective as enforcement tools.

Registration, labeling, and testing. CSHB 1545 would revise the product registration and label approval process to eliminate the duplication of efforts and other processes that can delay products getting to the market. The bill would reduce inconsistencies in the process as it was applied to different products to create a fair system and would streamline the approval process for malt beverages by requiring TABC to accept products with federal label approval. TABC would be given a reasonable deadline for approval, and the bill would give the agency the necessary authority to enforce current law and protect public safety by creating an exception to the approval requirement if TABC determined a product would create a public safety concern or a cross-tier or other law violation. The new requirement for malt beverage labels to list the beverage's alcohol content would be consistent with requirements placed on distilled spirits and wine and would replace requirements that required either "beer" or "ale" to be on the label.

Modernize code project. Because of the arcane nature of the Alcoholic Beverage Code and the need to modernize it, CSHB 1545 would establish a team to make recommendations to the Legislature for a modernization

and nonsubstantive technical code revision. The Sunset Advisory Commission and Texas Legislative Council staff would be the best entities to head the project because of their expertise and experience. This structure would be similar to the one used previously to examine the Health and Human Services Code. CSHB 1545 would ensure the project was focused by including parameters for the study, including prohibiting the review from considering changes to the overall three-tier system. All policy decisions would rest with the Legislature, and the two agencies' staff would simply provide the information to make those decisions.

OPPONENTS
SAY:

While the Texas Alcoholic Beverage Commission should be continued, CSHB 1545 would make several unnecessary and potentially harmful changes to the agency, including to TABC's enforcement and protest processes.

Commission. The Texas Alcoholic Beverage Commission should not be expanded because doing so could dilute the commissioners' sense of responsibility. Other state boards, including the Public Utility Commission, Texas Commission on Environmental Quality, and the Railroad Commission, function well with three commissioners. Simply expanding the number of commissioners would not improve the workings of the commission.

Changes to the conflict of interest provisions might be too lenient. A percentage of ownership threshold smaller than 5 percent might be better as an initial change.

Permits, license, fees. In combining beer and ale into one regulatory "malt beverages" category, CSHB 1545 should not apply the antiquated cash payment system from beer to the combined category but instead use the existing credit law that is used for ale and other alcoholic beverages.

Rather than remove all fees from statute, CSHB 1545 should institute caps on fees to ensure there was a limit to how high fees could be set. With no statutory limit, the alcoholic beverage industry could face uncertainty about the cost of doing business and the prospect of ever-increasing fees. Statutory limits could be adjusted as needed by the Legislature.

Application approval, denial, and protest process. The protest process for certain applications for beer licenses should continue to include local county judges, and this process should be extended to ale if the two categories are combined. Removing local elected officials from the process could remove the ability of Texans affected by a decision to have a voice in the protest process and to have local considerations taken into account. The change would focus the process on the state government, instead of the local community.

Provisions in CSHB 1545 that would require certain hearings to be held by SOAH should require them to be conducted locally and should require appeals to go local district courts rather than to the Travis County district court. This would help ensure local input and consideration of the issues by officials elected by those affected by the decision.

Requiring all final application protest decisions to be made by the commission could burden the commission and could lead to delays in decision-making while waiting for the commission to meet.

Enforcement and inspections. CSHB 1545 should remove the requirement in current law that TABC offer licensees and permittees a choice between a suspension and a fine in certain situations so that the commission can apply appropriate penalties and deter future violations.

The agency already has several enforcement tools, and some of the enforcement provisions in the bill could go too far. For example, CSHB 1545 should not require TABC to consider the profits earned from a violation when assessing a civil penalty, even on a second offense. Penalties should be determined based on the harm to the public and the nature and seriousness of a violation.

Registration, labeling, and testing. The bill should include revisions to the labeling process that would institute a file-and-use system for labels so that once a label with federal approval was filed with TABC, the labeled product could be sold in the state. Although the bill requires the commission to approve products with federal labels, it also allows the commission up to 30 days to issue approval, which could delay products getting to market.

Modernize code project. Any review of the Alcoholic Beverage Code should be undertaken by a body with the formal involvement of policy makers and entities with substantive experience on the issue, similar to the recent School Finance Commission created to study the school funding system. The Sunset Advisory Commission and Texas Legislative Council are not policy-making bodies and should not be required to lead this type of code review.

OTHER
OPPONENTS
SAY:

If the commission is to be expanded, it might be beneficial to establish requirements for some members, such as legal, financial, or industry experience.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of \$4.5 million in general revenue related funds through fiscal 2020-21.

SUBJECT: Creating disaster reinvestment and infrastructure planning (DRIP) fund

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 24 ayes — Zerwas, Longoria, C. Bell, G. Bonnen, Buckley, Capriglione, Cortez, S. Davis, Hefner, Howard, Jarvis Johnson, Miller, Minjarez, Muñoz, Schaefer, Sheffield, Sherman, Smith, Stucky, Toth, J. Turner, Walle, Wilson, Wu

0 nays

3 absent — M. González, Rose, VanDeaver

WITNESSES: For — Adrian Shelley, Public Citizen; Kenneth Flippin; (*Registered, but did not testify*: Scott Stewart, American Council of Engineering Companies of Texas; Frank McStay, Baylor Scott and White Health; Brie Franco, City of Austin; Guadalupe Cuellar, City of El Paso; Bill Kelly, City of Houston Mayor's Office; Lindsay Munoz, Greater Houston Partnership; Ender Reed, Harris County Commissioners Court; Meghan Weller, HCA Healthcare; Jennifer Emerson, Metropolitan Transit Authority of Harris County, Texas Rural Water Association; Ryan Ambrose, Memorial Herman Health System; Annie Spilman, National Federation of Independent Business; Mel Caraway, North Texas Conference of the United Methodist Church; Jessica Schleifer, Teaching Hospitals of Texas; Ned Muñoz, Texas Association of Builders; Rick Thompson, Texas Association of Counties; Grover Campbell, Texas Association of School Boards; David Matiella, Texas Chapter U.S. Green Building Council; Windy Johnson, Texas Conference of Urban Counties; Marcus Mitias, Texas Health Resources; Carrie Kroll, Texas Hospital Association; Joshua Houston, Texas Impact; Emily Northrop, Texas Impact, Society of Friends; Richard Ertel, Texas Impact, Poverty and Justice Task Force of the Southwestern Texas Synod of the Evangelical Lutheran Church of America; Michelle Romero, Texas Medical Association; Monty Wynn, Texas Municipal League; Perry Fowler, Texas Water Infrastructure Network; Ashley Harris, United Ways of Texas; Dale Bulla; Pat Bulla; Kathi Thomas)

Against — (*Registered, but did not testify*: Calvin Tillman)

On — (*Registered, but did not testify*: Piper Montemayor, Comptroller of Public Accounts; Jeff Walker, Texas Water Development Board)

DIGEST:

CSHB 274 would create the disaster reinvestment and infrastructure planning (DRIP) revolving fund to provide financial assistance to political subdivisions in response to a disaster. The bill would establish a board to administer the DRIP revolving fund, the application process, loan and grant requirements, and the management and investment of the fund.

DRIP board. The bill would establish the disaster reinvestment and infrastructure planning board to administer the DRIP revolving fund, determine the eligibility of applicants for financial assistance, and award grants and loans.

The board would be composed of certain members from the Texas Water Development Board, the Texas Department of Housing and Community Affairs governing board, the Texas Transportation Commission, the Public Safety Commission, and the Texas Commission on Environmental Quality. The board also would include the commissioners of insurance, agriculture, and land, the Health and Human Services Commission's executive commissioner, and the comptroller. Three public members, one each appointed by the governor, lieutenant governor, and House speaker, also would be on the board.

Appointed members would serve staggered six-year terms, with one member's term expiring February 1 of each odd-numbered year. The governor, lieutenant governor, and House speaker would have to appoint public members as soon as practicable after the bill's effective date, and the appointees' terms would expire in 2025, 2023, and 2021, respectively.

The board would be administratively attached to the Texas Water Development Board, which would have to provide office space and administrative support services as necessary to carry out the bill.

DRIP revolving fund. The bill would create the DRIP revolving fund as a special fund outside of the state treasury to be used by the board to

provide financial assistance to political subdivisions in response to a disaster. The DRIP board could establish separate accounts in the fund.

The fund would consist of money transferred or deposited to the credit of the fund by law, the proceeds of any state fee or tax statutorily dedicated to the fund, other revenue dedicated by the Legislature, the proceeds of issued bonds, and investment earnings and interest.

The DRIP fund would be kept and held by the Texas Treasury Safekeeping Trust Company. The board would have legal title to money and investments in the fund until the money was dispersed.

Use of funds. The DRIP board by rule would have to establish a revolving loan and grant program to use money from the DRIP fund to provide financial assistance for a public project to rebuild infrastructure damaged or destroyed in a disaster or to construct infrastructure to mitigate damage from a disaster.

The board could use up to 50 percent of money in the DRIP fund to provide loans to political subdivisions located wholly or partly in an area declared a disaster area by the governor and that the Federal Emergency Management Agency (FEMA) determined was eligible to receive financial assistance.

The remainder of money in the DRIP fund could be used to provide loans or grants to:

- a political subdivision in a disaster area that was not eligible for financial assistance through FEMA; or
- a public or private hospital, other than an ambulatory surgical center, that was located in a disaster area and was not eligible to receive federal assistance or private insurance assistance sufficient to restore the hospital to operating function and the closure of which would cause an imminent threat to public health in the surrounding area, as determined by the Department of State Health Services.

The DRIP board could not use more than 25 percent of the money

allocated for the above political subdivisions or hospitals to award grants that assisted with the costs of an infrastructure project, paid or deferred the payment of the principal and interest on a loan from the fund, or extended the amount of time for loan repayment.

The bill would prohibit the board from providing financial assistance to rebuild or construct a privately owned structure.

Money from the fund could be provided only during the period that the governor's disaster declaration was in effect.

Applications. The DRIP board would have to develop and implement an application process for a loan or grant from the DRIP fund. At a minimum, the application would have to include:

- a description of the infrastructure project for which the loan or grant was requested;
- an estimate of the total cost of the project;
- an estimate of the federal funds expected to be received for the project, if any;
- an estimate of the amount of money the applicant had available for project financing, if any; and
- evidence that the applicant had adequate staff, policies, and procedures to complete the project.

CSHB 274 would require the board to adopt a point system to prioritize applications based on the type of infrastructure project and stage of development, the applicant's ability to repay a loan, the availability of other money including state or federal matching funds, the existence of an emergency or imminent threat to public health, and other board criteria. The board would have to provide an expedited procedure for acting on an application. The expedited procedure could not affect an applicant's receipt of federal money.

Loans. CSHB 274 would require a loan made from the DRIP fund to be made at or below market interest rates for a term of no more than 20 years. The principal and interest payments would have to begin by 18

months after the loan originated, and loan proceeds would have to be expended only on a qualified infrastructure project.

The bill would require the DRIP board to provide for interest rates on loans to vary according to risk so that a political subdivision that was likely to suffer significant additional damage in subsequent disasters would pay a significantly higher interest rate.

The DRIP board would credit to the fund all principal and interest payments on a loan from the fund.

Grants. CSHB 274 would prohibit the DRIP board from making a grant to a political subdivision that contained properties with more than one insurance claim for flood damage paid for separate incidents.

The DRIP board would have to suspend the award of grants if the DRIP fund fell below the minimum fund balance established by board rules.

Report. By December 1 of each even-numbered year, the DRIP board would have to prepare and submit to the governor, lieutenant governor, and Legislature a report including the DRIP fund balance, the total dollar amount of disbursements during the previous biennium, and a general description of each project, including the approximate cost.

Management and investment. CSHB 274 would require the Texas Treasury Safekeeping Trust Company to hold and invest the fund for the board, taking into account the purposes for which money could be used.

The bill would state that the overall objective for the investment of the fund was to maintain sufficient liquidity to meet the needs of the fund while striving to preserve its purchasing power. The trust company would have any power necessary to manage and invest fund assets. The trust company could acquire, exchange, sell, or otherwise manage any kind of investment that a prudent investor would acquire or retain, taking into consideration the investment of all assets.

CSHB 274 would allow the trust company to recover the costs incurred in managing and investing funds only from the earnings of the fund.

Annually, the trust company would have to audit and report to the board with respect to the investment of the DRIP fund.

The bill would require the trust company to adopt an investment policy for the fund and present the policy to the investment advisory board. The advisory board would have to submit recommendations regarding the policy to the trust company.

The DRIP board would have to provide a forecast of cash flows each year to the trust company and provide updates to the forecasts as appropriate. The trust company would have to disburse money from the fund as directed by the DRIP board.

Appropriation. CSHB 274 would appropriate \$1 billion from the Economic Stabilization Fund to the comptroller to credit the DRIP revolving fund. This appropriation would take effect only if the bill was approved by a vote of two-thirds the membership of each house.

Effective date. Except as otherwise provided, the bill would take effect September 1, 2019.

SUPPORTERS
SAY:

CSHB 274 would help speed up recovery in Texas in the event of future natural disasters by putting in place a source of funds to help cities and counties with restoring public infrastructure. Currently, while local, state, and federal funds may be allocated to help rebuild public infrastructure after a disaster, it can be months or years before funds are actually available for spending. For example, not all federal funds for 2017's Hurricane Harvey relief have been disbursed. State and local governments cannot be subject to this kind of timetable to begin recovering and rebuilding after a disaster.

The bill would help address this need for immediate action after a disaster by establishing the disaster reinvestment and infrastructure planning (DRIP) fund to provide grants and loans to cities and counties to rebuild after a disaster and to harden infrastructure against future events.

Funding a disaster revolving fund would give the state another tool to help local governments respond to disasters and plan for the future. It is

important to have funds set aside specifically for this purpose and to have them ready to be disbursed quickly so that cities and counties do not have to wait while federal funds wind their way through federal bureaucracy or for the Legislature to enter session.

Establishing the DRIP fund would create a prudent and easily accessible source of money to fund disaster response and mitigation in perpetuity, which would complement the Legislature's use of other funds, such as the Economic Stabilization Fund (ESF), which have to be appropriated during legislative sessions. For example, if the DRIP were in existence, it could have been used for Hurricane Harvey rebuilding efforts, to provide matching funds for federal resources, and to help mitigate future disasters.

Crediting the DRIP fund with a one-time appropriation from the ESF would have a significant impact because the funds would provide both loans and grants. Loans would be repaid and the funds could be used again, keeping the DRIP fund going. The fund would have the flexibility to make grants if circumstances warranted, such as the need to protect public health by helping rebuild a hospital that was not eligible for other funds and did not have enough insurance coverage to rebuild. The bill also would allow the state to invest a portion of the funds from the ESF to maintain the DRIP fund's purchasing power and grow the amount against inflation and future disasters.

Additionally, Congress is considering legislation that would allocate money to states for revolving funds to assist with disaster recovery and mitigation. Establishing the DRIP fund outside of the state treasury while such federal legislation is pending would position Texas to take advantage of federal dollars if the measure is passed.

The DRIP fund would be similar to the state's use of bond funds for the State Water Implementation Fund for Texas, which helps local governments fund projects in the state water plan.

**OPPONENTS
SAY:**

CSHB 274 could be unnecessary as the state has the Economic Stabilization Fund available in the case of a disaster. In combination with HJR 145 by S. Davis, which would amend the Texas Constitution to enable the sale of state bonds for the disaster relief and infrastructure

planning fund, the bill could add new general obligation bond debt to the state's growing debt problem. The state should maintain its budgeting flexibility and address its needs through revenue available for any purpose rather than use bonds proceeds restricted for a specific use.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of \$6 million to general revenue related funds and \$1.1 billion to the Economic Stabilization Fund through fiscal 2020-21.